



**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

HARRY GIBBS COMMONWEALTH LAW COURTS
119 NORTH QUAY
BRISBANE QLD 4000

19 March 2024

Zed
By email

By email: foi-request-6221.ef17779b.skimmer666@aleeas.com

Dear Zed,

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (Court) of 18 February 2024 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). Specifically, you have requested the following:

Under the FOI Act, I request access to the certificate issued by the Australian Public Service Commissioner's representative (pursuant to section 21 of the Australian Public Service Commissioner's Directions 2016 (Cth)) in respect of the merit-based selection process for the SES Band 1 classified National Judicial Registrar vacancy that Susan O'Connor was selected to fill

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Searches undertaken

Searches were undertaken by staff of the Court to identify any document falling within the scope of your request. These searches included searches of files on the Court's shared drive.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to documents as I am satisfied that all reasonable steps have been taken to find the document you have requested, but the document cannot be found or does not exist.

I have taken the following into account in making my decision:

- the terms of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;

- the *Freedom of Information (Charges) Regulations 2019*; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Subsection 24A(1) of the FOI Act – Requests may be refused if documents cannot be found, do not exist or have not been received

Subsection 24A(1) of the FOI Act provides:

(1) An agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document; and
- (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

As a result of the searches undertaken, no document could be found that fell within the scope of your request. I am not aware of any other steps that could reasonably have been taken to identify the document you have requested.

Having regard to the above, I am satisfied that all reasonable steps have been taken to find any document within the ambit of your request, and that the document cannot be found or does not exist. As there is no document to provide you, I must refuse access to the document requested under subsection 24A(1) of the FOI Act.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within thirty (30) days of the date of this letter.

Where possible, please attach reasons as to why you believe review of the decision is necessary. The internal review will be carried out by another officer within thirty (30) days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within sixty (60) days of the date of this letter and be lodged in one of the following ways:

online: [Information Commissioner Review Application form \(business.gov.au\)](http://business.gov.au)

email: foidr@oaic.gov.au

post: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner (**OAIC**) website at: <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/freedom-of-information-reviews/information-commissioner-review-process>.

Complaints

If you are dissatisfied with the way the Court has handled your FOI request, you may complain to the Information Commissioner in writing. There is no fee for making a complaint. More information about making a complaint is available on the OAIC website, including a link to the online complaints form which the OAIC recommends using for complaints, at:
https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1.

Yours sincerely,

B Henderson.

B Henderson
FOI Officer